



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 26, 1996

Mr. David M. Berman
Balch Springs City Attorney
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR96-0404

Dear Mr. Berman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39101.

The City of Balch Springs (the "city") received an open records request for certain records, portions of which you contend may be withheld from the public pursuant to section 552.103(a) of the Government Code.¹ To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance you have made the requisite showing that most² of the information you have marked relates to pending litigation for purposes of section 552.103(a). Accordingly, those portions of the attorney billing statements that you have marked may be withheld.

¹The requestor also asks that the district respond to several questions, some of which do not appear to constitute requests for records. It is well-established that the Open Records Act does not require a governmental body to answer factual questions or to prepare new information in response to an open records request. Open Records Decision Nos. 445 (1986), 347 (1982), 342 (1982). You have expressed, however, the city's willingness to release documents that are responsive to questions 1(b), 2, and 3 to the extent that responsive documents exist. See Open Records Decision No. 87 (1975) (governmental bodies should make good faith effort to relate open records requests to existing documents).

²Although we agree with your contention that the description of legal services performed in connection with the litigation, this office does not believe that the initials of the attorney performing those services come under the protection of section 552.103 in this instance.

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hamilton Guajardo
Assistant Attorney General
Open Records Division

KHG/RWP/ch

Ref.: ID# 39101

Enclosure: Submitted documents

cc: Ms. M.J. Porter
5356 Wild Oak
Balch Springs, Texas 75180
(w/o enclosures)